

Sayers-Roods v. Machado, August 19, 2022 - Plaintiff's Motion to Compel Subpoena Witness (B.T.)

EXHIBIT B

Objection Letter from San Benito County Counsel Barbara Thompson as to Plaintiff's Doc. 45
Subpoena (Aug 11, 2022)

1 BARBARA J. THOMPSON, County Counsel (SB# 199997)
2 Office of the County Counsel
3 County of San Benito
4 481 Fourth Street, Second Floor
5 Hollister, California 95023
6 Telephone: (831) 636-4040
7 Facsimile: (831) 636-4044
8 E-mail: bthompson@cosb.us
9 Attorneys for County of San Benito, Office of County
10 Counsel, San Benito County Sheriff Eric Taylor, San
11 Benito County District Attorney Candice Hooper

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KANYON SAYERS-ROODS., et al.,

No. 22-CV-03092-EJD

Plaintiffs,

**OBJECTION TO SUBPOENA TO PRODUCE
DOCUMENTS, INFORMATION, OR
OBJECTS OR TO PERMIT INSPECTION IN
A CIVIL ACTION**

v.
MARLENE RITA MACHADO, et al.,

[Fed. Rules. Of Civ. Proc., Rule 45 (d)(2)(B)]

Defendants.

Barbara J. Thompson, County Counsel of the County of San Benito County, on behalf of herself, San Benito County Sheriff Eric Taylor, and San Benito County District Attorney Candice Hooper, and the County of San Benito and its officials and employees generally, all non-parties in the above entitled action, in accordance with Federal Rules of Civil Procedure, Rule 45 (d)(2)(B), hereby objects to that certain “Subpoena to Produce Documents, Information, or Objects, or to Permit Inspection in a Civil Action” issued by the plaintiff in the above-captioned action, a true copy of which is attached hereto as Exhibit “A” on the following grounds:

1. Improper Service.

The subpoena is directed to custodian of records of the Office of San Benito County Counsel Barbara Thompson, but the proof of service indicates service was made instead on “Nancy” of the

1 Auditing Dept. on Friday, August 5, 2022. No provisions of Fed. R. Civ. P., Rule 45 (d), (e), or (g) were
 2 attached. No contact information was provided for the person issuing the subpoena, the pro se plaintiff.

3 2. No Pending Action.

4 The above-captioned action was dismissed by Order of this Court dated July 8, 2022, on the
 5 Court's own motion that the Court lacks jurisdiction over the claims asserted (ECF Dkt. No. 38). The
 6 court granted leave to file in state court as to the first and third claims, or to file an amended complaint no
 7 later than August 8, 2022. The undersigned is informed and believes, on the basis of checking ECF, that
 8 no second amended complaint in this court was filed within the time allowed by the court.

9 3. Tribal Court Jurisdiction.

10 The Court's observation that the claims asserted in this action might be resolved by the
 11 "Costanoan Tribal Court" (Order of Dismissal, page 2, lines 19 – 24) does not constitute a judicial
 12 determination that such a court in fact exists or has jurisdiction. The Federal trust lands in question, Lots
 13 1, 2 & 3, Section 24, Township 14 South, Range 4 East are an allocation patent to Ann Marie Sayers as
 14 an individual Native American and are not held in trust for a federally recognized tribe such that the land
 15 constitutes a "reservation" for a tribe. Adjacent lands are held by Ann Marie Sayers as a tenant-in-
 16 common with non-Native American entities or individuals and are not, by definition "tribal lands," or
 17 "Indian Country" as defined by 18 U.S.C. § 1151. Accordingly, there is no federally recognized tribe, no
 18 tribal court, and no valid tribal court order. The purported "Chief Justice" of the "Costanoan Tribal
 19 Court," Cary Lee Peterson, is not an attorney licensed to practice law in California. Upon information
 20 and belief, I state my belief that Mr. Peterson is a convicted felon in the U.S. District Court for the
 21 District of New Jersey in 2018 on two counts of false certification to the Securities and Exchange
 22 Commission and one count of securities fraud.

23 4. Subpoena Seeks Privileged Attorney-Client Communications and Attorney-Work Product.

24 The subpoena seeks, "any written documents, reports, email messages, SMS text messages, or
 25 informal notes between the Office of San Benito County Counsel and . . . San Benito County official . . .
 26 concerning Indian Cayon' (Indian trust land), Costanoan Indians Tribal Community (including tribal staff
 27 members or officials, Ann Marie Sayers, Marlene Machado, Kanyon Sayer-Roods, 'Indian Canyon
 28 Road" which the attached affidavit of the plaintiff makes clear includes the "San Benito County District

1 Attorney, San Benito County Counsel [.] the San Benito County Sheriff, San Benito County
2 Commissioner" and agencies consulted by me and attorneys in my office in the course of investigating
3 the claims made by the parties to this action in order to properly advise County officials with regard to
4 the law and their duties. The San Benito County Counsel is the civil legal advisor to all County Officials
5 and Departments. As such, such documents are privileged and not subject to discovery, even if there was
6 an actual pending case.

7 5. Relevance and Undue Burden.

8 The subpoena is very broad, and seeks records related to one sentence in an order by Judge Davila
9 that has been taken out of context and deliberately misconstrued.

10 For the forgoing reasons, the undersigned objects to the subpoena duce tecum issued by the pro
11 per plaintiff in this action and will not comply on the date specified.

12 Dated: August 11, 2022

Barbara Thompson
13 Barbara J. Thompson

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of San Benito. I am over the age of eighteen years and not a party to the within entitled action. My business address is 481 Fourth Street, 2nd Floor, Hollister, CA 95023.

On August 11, 2022, I served one true copy of:

**OBJECTION TO SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS OR TO PERMIT INSPECTION IN A CIVIL ACTION**

X by sending by email addressed to the persons and/or entities listed below:

Kanyon Sayers-Roods:

ksr@costanoan.org

Marlene Machado:

blkamaro@yahoo.com

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on August 11, 2022, at Hollister, California.

Angela Thomson
Angela Thomson

EXHIBIT A

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California



KANYON SAYERS-ROODS, ET AL.)
 Plaintiff)
 v.)
)
 MARLENE RITA MACHADO)
 Defendant)

Civil Action No. 22-CV-03092-EJD

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Custodian of Records - Office of San Benito County Counsel Barbara Thompson,
481 4th St #2, Hollister, CA 95023

(Name of person to whom this subpoena is directed)



Any written documents, reports, email messages, SMS text messages, or informal notes, between the Office of San Benito County Counsel, and Bureau of Indian Affairs ("BIA"), U.S. District Court (any district), member of U.S. Congress, San Benito County official, Hollister City official, California state official, Justice Department, attorney, lobbyist, or private citizen particular interest in criminal or civil matters concerning 'Indian Canyon' (Indian trust land), Costanoan Indians Tribal Community (including tribal staff members or officials, Ann Marie Sayers, Marlene Machado, Kanyon Sayers-Roods, 'Indian Canyon Road'

Place: U.S. DISTRICT COURT (San Jose, CA) Date and Time:

280 S 1st St, San Jose, CA 95113; or

in alternative at the San Benito County District Attorney Office

August 18, 2022

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: AUG 03 2022

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 22-CV-03092-EJD

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*

on *(date)*

I served the subpoena by delivering a copy to the named person as follows:

on *(date)* ; or

I returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$

My fees are \$ for travel and \$ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KANYON SAYERS-ROODS, POWER-OF-
ATTORNEY
FOR ANN-MARIE SAYERS OF THE
COSTANOAN
INDIANS OF INDIAN CANYON;

KANYON SAYERS-ROODS
(IN AN INDIVIDUAL CAPACITY)

Plaintiff(s)

-vs-

MARLENE RITA MACHADO

Defendant

C.A. No. 22-CV-03092

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF
SUBPOENA DUCES TECUM

AFFIDAVIT

I, KANYON SAYERS-ROODS, a member of the Chualar-Costanoan Tribal Band of Indian Canyon, California, residing in San Jose, in Santa Clara County, California, MAKE UNSWORN OATH AND SAY THAT:

1. I declare that I am filing Subpoena Duces Tecum for pertinent records from the Office of the San Benito County Counsel because I want to authenticate assertions, administrative orders, claims, or particular interest, made by one or more federal/state/local government official(s), whereby resulted in the San Benito County District Attorney, San Benito County Counsel San Benito County Sheriff, San Benito County Commissioner, California State Attorney General (Office of Indian Affairs), California Highway Patrol, Department of the Interior, or adjuncts or non-judicial employees at the U.S. District Court, ignore, defy, or unlawfully repeal, U.S.D.J. Davila's order [D.I.. 38], concerning my tribal court's jurisdiction, and tribal nation's sovereignty on powers of self-governing and immunity under 25 U.S.C. 1301.
2. I declare that Doc. Nos. 40 and 44 are judicial orders issued by the Costanoan Tribal Court by Tribal Council's elected Chief Justice, Mr. Cary Peterson, who as well serves as my tribal community Chief Counsel and Chief Advisor. Therefore, Mr. Peterson has authority to issue and enforce orders of Costanoan-Chualar Tribal Community's tribal court which affect tribal affairs within Indian Canyon, *Indian Canyon Road* (an Indian reservation road. See *McDonald v. Means* (9th Cir. 2002).) [see "Exhibit A" hereunto], Tribal Council or Tribal Court officials serving in an official capacity, and tribal members. In addition, I understand this tribal court under 25 U.S.C. 1301 to be known to this court per declaration of order made by U.S.D.J. Davila [D.I. 38].

Affidavit

Page 2 of 2

3. I declare that my subpoena filed with this court is solely for the purpose of authenticating administrative claims, declarations, or statements that have/would affect the result of the instant case.

[CERTIFICATION.]

4. On this 3rd day of August, 2022, I, Kanyon Sayers-Roods, a tribal member and President of the Costanoan Indian Tribal Community of Indian Canyon (*Chualar-Costanoan Indians*), declare and submiting as true and correct, under penalty of perjury and in lieu of oath pursuant to 28 U.S.C. 1746, submitting this Affidavit to the Clerk of Court, and serving notice of this legal action to parties of this civil action.

s/ Kanyon Sayers-Roods

(Signature)

KANYON SAYERS-ROODS

EXHIBIT A

Map of Indian Canyon Road
(Shows Indian Country 'Warning Signs')

